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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 JOHN W. LAMBERT,

10 Plaintiff,

11 v.

12 MHP MERKEL, *et al.*,

13 Defendants.

CASE NO. C17-1849-RSM-MAT

ORDER DECLINING TO SERVE  
COMPLAINT AND GRANTING  
LEAVE TO AMEND

14 Plaintiff John Lambert is currently confined at the Snohomish County Jail in Everett,  
15 Washington. He has submitted to the Court for filing a civil rights complaint under 42 U.S.C.

16 § 1983. The Court, having reviewed plaintiff's complaint, hereby finds and ORDERS as follows:

17 (1) Plaintiff alleges in his civil rights complaint that he has serious mental health issues  
18 and that despite submitting numerous kites to the mental health and medical departments asking  
19 for his medication, "it took a ridiculous amount of effort" to get help. (Dkt. 4-1 at 3.) He further  
20 asserts that when a mental health professional ("MHP") did come to see him, she was "very rude,  
21 unprofessional and antagonizing." (Dkt. 4-1 at 3.) Plaintiff identifies Snohomish County  
22 Corrections and MHP Merkel as defendants in his complaint. (*Id.* at 1-2.)

23 (2) Rule 8(a) of the Federal Rules of Civil Procedure provides that in order for a

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1 pleading to state a claim for relief it must contain a short and plain statement of the grounds for  
2 the court's jurisdiction, a short and plain statement of the claim showing that the pleader is entitled  
3 to relief, and a demand for the relief sought. The statement of the claim must be sufficient to "give  
4 the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."  
5 *Conley v. Gibson*, 355 U.S. 41, 47 (1957). The factual allegations of a complaint must be "enough  
6 to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
7 544, 555 (2007). In addition, a complaint must allege facts to state a claim for relief that is  
8 plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

9 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show (1) that he  
10 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)  
11 that the violation was proximately caused by a person acting under color of state or federal law.  
12 See *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a  
13 plaintiff must allege facts showing how individually named defendants caused, or personally  
14 participated in causing, the harm alleged in the complaint. See *Arnold v. IBM*, 637 F.2d 1350,  
15 1355 (9th Cir. 1981).

16 A defendant cannot be held liable solely on the basis of supervisory responsibility or  
17 position. *Monell v. Department of Social Servs., of City of New York*, 436 U.S. 658, 691-694  
18 (1978). Rather, a plaintiff must allege that a defendant's own conduct violated the plaintiff's civil  
19 rights. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385-90 (1989). A local government unit or  
20 municipality can be sued as a "person" under § 1983. *Monell*, 436 U.S. at 691. However, a  
21 municipality cannot be held liable under § 1983 solely because it employs a tortfeasor. *Id.* A  
22 plaintiff seeking to impose liability on a municipality under § 1983 must identify a municipal  
23 "policy" or "custom" that caused his or her injury. *Bryan County Commissioners v. Brown*, 520

1 U.S. 397, 403 (1997) (citing *Monell* 436 U.S. at 694).

2 (3) The Court declines to order that plaintiff's complaint be served because his  
3 complaint is deficient in the following respects:

4 (a) Plaintiff identifies Snohomish County Corrections as a defendant in this action.  
5 However, Snohomish County Corrections is an entity of Snohomish County and, as such, is not a  
6 proper defendant in this action. *See Nolan v. Snohomish County*, 59 Wn.App. 876, 883 (1990)  
7 ("in a legal action involving a county, the county itself is the only legal entity capable of suing and  
8 being sued"). Plaintiff may pursue a claim against Snohomish County itself, but in order to do so  
9 he must specifically identify the County as a defendant in this action, he must identify the County  
10 "policy" or "custom" that caused him harm, and he must identify the federal constitutional right  
11 that he believes has been violated by the identified "policy" or "custom."

12 (b) Plaintiff does not specifically allege in his complaint any violation of a federal  
13 constitutional right. However, it appears that he may be attempting to assert a claim that he has  
14 been denied adequate medical or mental health care at the Snohomish County Jail. When a claim  
15 of inadequate medical or mental health care is brought by a pretrial detainee, the claim arises under  
16 the Due Process Clause of the Fourteenth Amendment. *Clouthier v. County of Contra Costa*, 591  
17 F.3d 1232, 1243-44 (9th Cir. 2010); *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1017 (9th  
18 Cir. 2010). However, such claims are properly evaluated under Eighth Amendment standards.  
19 *See id.*

20 In order to establish an Eighth Amendment violation, a prisoner must satisfy a two-part  
21 test containing both an objective and a subjective component. The Eighth Amendment standard  
22 requires proof that (1) the alleged wrongdoing was objectively "harmful enough" to establish a  
23 constitutional violation; and (2) the prison official acted with a sufficiently culpable state of mind.

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1 *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The objective component of an Eighth Amendment  
2 claim is “contextual and responsive to ‘contemporary standards of decency.’” *Hudson v.*  
3 *McMillian*, 503 U.S. 1, 8 (1992) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). The state  
4 of mind requirement under the subjective component of the Eighth Amendment standard has been  
5 defined as “deliberate indifference” to an inmate's health or safety. *Farmer*, 511 U.S. at 834.  
6 Under the “deliberate indifference” standard, a prison official cannot be found liable for denying  
7 an inmate humane conditions of confinement unless the official knows of and disregards an  
8 excessive risk to inmate health or safety. *Id.* at 837. “[T]he official must both be aware of facts  
9 from which the inference could be drawn that a substantial risk of serious harm exists, and he must  
10 also draw the inference.” *Id.*

11 Plaintiff indicates in his complaint that he experienced a delay in receiving medication to  
12 address his mental health issues, but he fails to make clear who he believes was responsible for the  
13 delay or what harm he suffered as a result of any alleged delay. If plaintiff wishes to proceed on  
14 a claim that he was denied adequate mental health care, he must specifically identify the  
15 individuals involved in the denial of such care, and he must allege specific facts demonstrating  
16 that each named individual was deliberately indifferent to a serious mental health or medical need.

17 With respect to MHP Merkel, the Court notes that plaintiff asserts only that this defendant  
18 was rude and unprofessional. These assertions are not sufficient to demonstrate that this individual  
19 violated plaintiff’s federal constitutional rights. Again, if plaintiff wishes to proceed against MHP  
20 Merkel, he must allege facts showing that she was deliberately indifferent to a serious mental  
21 health or medical need. Rude behavior and a lack of professionalism simply does not meet that  
22 standard.

23 (4) Plaintiff may file an amended complaint curing the above noted deficiencies within

1 **thirty (30) days** of the date on which this Order is signed. The amended complaint must carry the  
2 same case number as this one. If no amended complaint is timely filed, the Court will recommend  
3 that this action be dismissed.

4 Plaintiff is advised that an amended pleading operates as a *complete* substitute for an  
5 original pleading. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.) (citing *Hal Roach*  
6 *Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (as amended),  
7 *cert. denied*, 506 U.S. 915 (1992)). Thus, any amended complaint must clearly identify the  
8 defendant(s), the constitutional claim(s) asserted, the specific facts which plaintiff believes support  
9 each claim, and the specific relief requested.

10 (5) The Clerk is directed to send plaintiff the appropriate forms so that he may file an  
11 amended complaint. The Clerk is further directed to send copies of this Order to plaintiff and to  
12 the Honorable Ricardo S. Martinez.

13 DATED this 9th day of February, 2018.

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16 Mary Alice Theiler  
17 United States Magistrate Judge  
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